



United States Government

## NATIONAL LABOR RELATIONS BOARD

Region 9

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Cincinnati, Ohio 45202-3271

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September 30, 2011

[REDACTED]  
Operating Technician Dow Operating  
Technicians  
P.O. Box 98  
Red House, West Virginia 25168-0098

Re: UNION CARBIDE CORPORATION  
Case 9-RD-065026

Dear [REDACTED]

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted and for the following reasons, I am dismissing the petition in this matter.

Based on the investigation, it appears that your petition for decertification covers the operating technicians employed by Union Carbide Corporation, a subsidiary of The Dow Chemical Company, at Route 25, Institute, West Virginia.

On August 19, 2011, the Acting Regional Director concluded following the investigation in Union Carbide Corporation, a subsidiary of The Dow Chemical Company, Case 9-CA-061317, that Union Carbide Corporation was a successor employer of Bayer CropScience with respect to its bargaining unit of operating technicians employed at the Institute, West Virginia facility and as such, was obligated to recognize the Union, International Association of Machinists & Aerospace Workers, AFL-CIO, District Lodge 54, as exclusive collective-bargaining representative of these employees.

Thereafter, on about September 6, 2011, the Employer and the Union entered into a non-Board private settlement agreement in which the Employer agreed to recognize the Union as the exclusive collective-bargaining representative of the operating technicians and to negotiate in good faith with the Union. According to the Employer and the Union, the parties first began negotiations for a collective bargaining agreement on September 20, 2011. On September 22, 2011, you filed the instant petition for decertification.

The Board's recent decision in *UGL-UNICCO Service Company*, 357 NLRB No. 76 (August 26, 2011) restores, with modifications, the "successor bar" doctrine enunciated in *St. Elizabeth Manor*, 329 NLRB 341 (1999) and affords parties a reasonable period of bargaining after a union and successor employer first commence negotiations. The Board's decision in *UGL-UNICCO Service Company* specifically provides that this period will be at least 6 months from the date of the parties' first bargaining meeting and could extend up to 1 year, depending upon a variety of factors. See 357 NLRB No. 76 at pg. 9. Because the instant petition was filed only two days after the parties' first bargaining session on September 20, 2011, the successor bar doctrine applies and your petition is untimely. I shall therefore dismiss the petition.

**Right to Request Review:** Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

**Procedures for Filing a Request for Review:** Pursuant to the Board's Rules and Regulations, Sections 102.111-102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington DC by close of business on **October 14, 2011**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time on the due date.** Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. <sup>1/</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Very truly yours,

/s/ Gary W. Muffley  
Gary W. Muffley  
Regional Director

Enclosures  
cc's on next page

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<sup>1/</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

cc: Executive Secretary - National Labor Relations Board - 1099 - 14th Street, N.W.,  
Washington, D.C. 20570-0001

[REDACTED] - Attorney at Law - Jackson Kelly PLLC - 500 Lee Street, E, Suite 1600  
Charleston, West Virginia 25301-3202

[REDACTED] - Union Carbide Corporation - Route 25 - Institute, West Virginia 25112

Dow Operating Technicians - Route 25 - Institute, West Virginia 25112

[REDACTED] - Grand Lodge Representative - International Association of Machinists &  
Aerospace Workers, AFL-CIO, District Lodge 1 - 135 Merchant Street, Suite 265  
Cincinnati, Ohio 45246-9310

[REDACTED] - Business Representative - International Association of Machinists  
Local 656 District 54 - 801 Main Avenue - Nitro, West Virginia 25143-2141